

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

L.B., a minor, by and through)	
Next Friend, MICHAEL BUSCHMAN,)	
)	
<i>Plaintiff,</i>)	
)	Case No. 2:18-cv-04060-BCW
vs.)	
)	
JEFFERSON CITY SCHOOL DISTRICT,)	
)	
<u>ET AL.</u> ,)	
)	JURY TRIAL DEMANDED
<i>Defendants.</i>)	

**SUGGESTIONS IN SUPPORT OF PLAINTIFF’S MOTION FOR LEAVE TO AMEND
THE FIRST AMENDED COMPLAINT BY NAMING THE JOHN DOE DEFENDANT**

COMES NOW Plaintiff, by and through counsel, and in compliance with Local Rule 7.0(a), hereby supports her Motion for Leave to Amend the First Amended Complaint by Naming the John Doe Defendant (“the Motion”) with the following suggestions:

The First Amended Complaint (“the Complaint”) includes a “John Doe” Defendant, who “was the individual or individuals responsible for implementing and enforcing the District Policies identified below [in the Complaint] at JCHS.” *See* the Complaint, ¶ 5 at p. 2. The Complaint states, “Plaintiff will seek leave to amend the Complaint by substituting parties when the identity or identities of John Doe are revealed during discovery.” *Id.* At the deposition of Defendant Robert James, taken on September 13, 2018, it became clear that Deborah Kremer was the individual responsible for implementing and enforcing the District Policies identified in the Complaint at JCHS during the relevant time. Accordingly, Plaintiff now seeks to amend the

First Amended Complaint by substituting the “John Doe” Defendant with Deborah Kremer. Plaintiff does not seek to make any other substantive changes to the Complaint.¹

To change the name of a “John Doe” Defendant to the individual who has been identified through discovery constitutes an amendment under Rule 15(a) of the Federal Rules of Civil Procedure. See, e.g., *Heglund v. Aitkin County*, 871 F.3d 572, 578-79 (8th Cir. 2017). Under Rule 15(a), “The court should freely give leave when justice so requires.” FED. R. CIV. PRO. 15(a)(2).

Justice requires permitting the amendment in this case. First, naming the Defendant when her identity is known will provide important information to the jury. Second, there can be no prejudice to Ms. Kremer or the other parties from the amendment. Ms. Kremer is an employee of Jefferson City School District who will likely be represented by the same counsel that represents the other Defendants. Defendants have filed answers to the counts in the Complaint that are directed against John Doe. Moreover, while Defendants in their Rule 26(a) Disclosures were somewhat reticent about Ms. Kremer’s role in the events described in the Complaint, it seems evident that they had knowledge that the allegations against John Doe in the Complaint were averments about Ms. Kremer’s role.

As recent deposition testimony has revealed that Deborah Kremer is the individual described in the Complaint as John Doe, leave should be given to permit Plaintiff to amend the Complaint accordingly. Therefore, Plaintiff respectfully requests that the Motion be granted.

¹ The proposed Second Amended Complaint, which is attached to the Motion as Exhibit A, would omit the second sentence of paragraph 5, “Plaintiff will seek leave to amend the Complaint by substituting parties when the identity or identities of John Doe are revealed during discovery.” Also, the word “Petition” appeared three times in the First Amended Complaint; that word is changed to “Complaint.” In all other respects (other than the date on the Certificate of Service and the address of Plaintiff’s counsel), the Second Amended Complaint is identical to the First Amended Complaint.

RESPECTFULLY SUBMITTED

/s/ Daniel J. Rhoads
Daniel J. Rhoads, 59590 MO
THE RHOADS FIRM, LLC
3703 Watson Rd.
St. Louis, MO 63109
Phone: (314) 225-8848
Fax: (314) 754-9103
therhoadsfirmlc@gmail.com

Attorney for Plaintiff
L.B., a minor, by and through
Next Friend, Michael Buschman

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was filed electronically with the Clerk of the Court on October 8, 2018, to be served by operation of the Court's electronic filing system upon:

Christopher Rackers
Ryan Bertels
Schreimann, Rackers & Francka, LLC
931 Wildwood Dr., Suite 201
Jefferson City, MO 65109
cpr@srfblaw.com
rb@srfblaw.com

Attorneys for Defendants

/s/ Daniel J. Rhoads